

Erik A. Christiansen (USB 7372)
Hannah J. Ector (USB 17980)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
EChristiansen@parsonsbehle.com
HEctor@parsonsbehle.com

Sarah E. Diamond (CA SBN 281162) (*Admitted Pro Hac Vice*)
John S. Worden (CA SBN 142943) (*Admitted Pro Hac Vice*)
VENABLE LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Telephone: (310) 229-9900
SEDiamond@venable.com
JSWorden@Venable.com

*Attorneys for Plaintiffs and Counterclaim Defendants Capana Swiss Advisors AG
and AmeriMark Automotive AG*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK
AUTOMOTIVE AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**DECLARATION OF SHAEN
BERNHARDT IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
COMPEL DEPOSITION OF NICOLAI
COLSHORN**

Case No. 2:23-cv-00467

Judge: Hon. Ted Stewart

Magistrate Judge: Hon. Cecilia M. Romero

DECLARATION OF SHAEN BERNHARDT

I, Shaen Bernhardt, declare as follows:

1. I am over the age of 18 and unless otherwise stated, I have personal knowledge of the following facts and would testify consistent with the following information if called to do so.

2. I am the corporate representative of Plaintiffs AmeriMark Automotive AG (“AmeriMark”) and Capana Swiss Advisors AG (“Capana”) in this action.

3. During a phone call at approximately 3:00 p.m. on June 27, 2024 Central European Summer Time (“CEST”), AmeriMark’s outside legal counsel Felix Kappeler informed me that Nicolai Colshorn wanted to have a conference call to deal with the logistics of his resignation from AmeriMark.

4. Approximately one hour later the same day, Mr. Kappeler scheduled a Teams meeting for 9:30 a.m. CEST the next day, June 28, 2024 with himself, myself, and Mr. Colshorn as attendees.

5. The Teams meeting began around 9:35 a.m. CEST on June 28, 2024. Mr. Kappeler, Mr. Colshorn, and myself were in attendance. The topics discussed included Mr. Colshorn’s approval of the draft resignation letter that Mr. Kappeler had prepared the day before and the proper filings to be made with the commercial register of Zug.

6. No one at AmeriMark forced, pushed, or otherwise encouraged Mr. Colshorn to retire. To the contrary, Plaintiffs sought to retain him.

7. Based on my understanding, Mr. Colshorn has indicated he will not agree to be deposed, even with knowledge that Plaintiffs may be subject to sanctions if he does not appear.

8. I was deposed in this matter on September 4, 2024, in Salt Lake City, Utah. A true and correct copy of the relevant excerpt from my deposition transcript is attached hereto as **Exhibit 1.**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 26, 2024 at Zug, Switzerland.

/s/ Shaen Bernhardt

Shaen Bernhardt

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of November, 2024, I caused a true and correct copy of the foregoing **DECLARATION OF SHAEN BERNHARDT IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO COMPEL DEPOSITION OF NICOLAI COLSHORN** to be filed on the Court's CM/ECF platform, which sent notice to all counsel of record.

/s/ Hannah Ector

Hannah Ector

EXHIBIT 1

CAPANA SWISS ADVISORS AG vs RYMARK
SHAEN BERNHARDT - 09/04/2024

Page 1

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF UTAH

3 * * * * *

CERTIFIED COPY

4 CAPANA SWISS ADVISORS AG, a
Swiss corporation; AMERIMARK
5 AUTOMOTIVE AG, a Swiss
corporation,

6 Plaintiffs,

7 v.

Case No. 2:23-cv-00467

8 RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
9 individual; JOHN KIRKLAND, an
individual; and VICKY SMALL, an
10 individual,

Judge: Robert J. Shelby

Magistrate Judge:
Cecilia M. Romero

11 Defendants.

12 RYMARK, INC., a Utah corporation;
and NICHOLAS THAYNE MARKOSIAN,
13 an individual;

14 Counter Claimants,

15 v.

16 CAPANA SWISS ADVISORS AG, a
Swiss corporation, and AMERIMARK
17 AUTOMOTIVE AG, a Swiss
corporation,

18 Counter Defendants.

19 * * * * *

20 VIDEORECORDED DEPOSITION OF

21 Shaen Bernhardt

22 September 4, 2024

23
24 Reported by: Spencer Von Jarrett, RPR No. 993793
25

1 Deposition of Shaen Bernhardt taken on September 4, 2024 at
2 9:00 a.m. at the offices of Kunzler, Bean & Adamson PC, located at
3 50 West Broadway, Suite 1000, Salt Lake City, Utah 84101, before
4 Spencer Von Jarrett, Certified Court Reporter, in and for the
5 State of Utah.

6

7

A P P E A R A N C E S

8 Stephen Richards
9 Chad S. Pehrson
10 KUNZLER BEAN & ADAMSON, PC
11 50 West Broadway, Suite 1000
12 Salt Lake City, UT 84101
13 srichards@kba.law
14 cpehrson@kba.law

15 John Worden
16 VENABLE LLP
17 101 California Street, Suite 3800
18 San Francisco, CA 94111
19 jsworden@venable.com

20

Also present: Lance Harrison, Videographer

21

22

23

24

25

1 to his resignation. And there were times before that, for
2 certain.

3 Q. Did he tell you in that conversation why he wanted to
4 resign?

5 A. I don't think he was resigning so much as he was
6 retiring.

7 And I think to some extent that his resignation, per se,
8 of AmeriMark Automotive was also a function of him leaving the
9 parent company, AmeriMark Group, that it was a combination.

10 But again, I'm speculating a little bit there. It
11 wasn't really the nature of my conversation with him.

12 Q. Is it your understanding that he resigned his
13 directorship at AmeriMark Automotive and AmeriMark Group at about
14 the same time?

15 A. No, I think there was some delay. But again, I'd want
16 to defer to the commercial register.

17 Q. Which one came first in your recollection?

18 A. I don't actually know when which one became effective
19 when.

20 And again, I can't say I don't know exactly what his
21 status is at AmeriMark Group at the moment. I haven't looked at
22 the commercial register in some time.

23 Q. When you asked him to stay on as a director of AmeriMark
24 Automotive, what did he say in response?

25 A. Well, let's talk about which time we're talking about.

1 That sounds like a tautology, I'm sorry.

2 Can we --

3 Q. Yeah, when was the first time Mr. Colshorn told you he
4 wanted to resign as the director of AmeriMark Automotive?

5 A. I'm not sure whether or not there was an instance
6 before, let's call it, spring of 2022. I'm certain that in spring
7 2022, he announced his intention to resign from both companies.
8 And he did so in email and writing.

9 I didn't want him to leave the company because, at that
10 point in time, we were involved in trying to get things cleaned up
11 even more than they already had been. There had been some issues.

12 Obviously, though it wasn't quite there yet, the specter
13 of this litigation was beginning to suggest itself in the vaguest
14 of ways. I mean, we're talking still now when I think Mr. Worden
15 and I were having active conversations, or semi-active
16 conversations with Mr. Pehrson.

17 So he was a valuable resource, in my opinion. He'd been
18 with a company, by which now I mean AmeriMark Automotive,
19 essentially since inception. I think, if not since day one, then
20 within weeks of the initial formation.

21 So I didn't want him to leave because I thought he was
22 an invaluable resource.

23 I wasn't as, I think, good at suggesting that he not
24 leave, as was Felix Kappeler, who suggested to him that he should
25 really try to stay on. That's my recollection of that.

1 Some of that was in email, and frankly, it's in
2 production. I'm sort of surprised that the Defendant's pleadings
3 Haven't caught that nuance, but okay.

4 And some of that was in oral discussion subsequent.

5 **Q. So at that time in, say, spring of 2022, did Mr.**
6 **Colshorn tell you he wanted to resign from AmeriMark Automotive**
7 **because he was retiring, or did he give you another reason?**

8 A. It was retiring. And he was, to my understanding,
9 starting to reduce almost all of his mandates, and was in the
10 process of either removing himself from mandates -- in companies
11 which he had been involved, he also, I think, put some into
12 liquidation in the 18 months prior to his retirement and generally
13 was reducing his involvement in Swiss corporate affairs.

14 In addition to that, and this was the real sign that we
15 might not be able to get him back, he started spending more time
16 at his summer home in Mallorca. And you don't really get people
17 back from Mallorca after they're 60.

18 **Q. So we talked about spring 2022.**

19 **When is the next time that you can recall discussing Mr.**
20 **Colshorn's resignation with him?**

21 A. I think there probably might have been informal
22 discussions in between that, or sort of ad hoc, when he was
23 frustrated with something and wanted to go.

24 But then certainly it got very serious in -- here I'm
25 going from memory -- but sort of in the beginning of 2023. And he

1 REPORTER'S CERTIFICATE

2 STATE OF UTAH)

3 COUNTY OF UTAH)

4 I, Spencer Von Jarrett, a Certified Shorthand Reporter,
5 Registered Professional Reporter, hereby certify:

6 THAT the foregoing proceedings were taken before me at
7 the time and place set forth in the caption hereof; that the
8 witness was placed under oath to tell the truth, the whole truth,
9 and nothing but the truth; that the proceedings were taken down by
10 me in shorthand and thereafter my notes were transcribed through
11 computer-aided transcription; and the foregoing transcript
12 constitutes a full, true, and accurate record of such testimony
13 adduced and/or oral proceedings had, and of the whole thereof.

14 I have subscribed my name on this 3rd day of September,
15 2024.

16

17

18



19

Spencer Von Jarrett

20

Registered Professional Reporter #993793

21

22

23

24

25